Fisher-Haynes Corporation of Georgia *and* Truck Drivers and Helpers Local Union No. 728

Fisher-Haynes Corp. *and* Teamsters Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, Petitioner. Cases 10-CA-15975 and 10-RC-12101

July 26, 1982

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 26, 1981, Administrative Law Judge Richard J. Linton issued the attached Decision in this proceeding. Thereafter, both the General Counsel and Respondent filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge only to the extent consistent herewith and to adopt his recommended Order, as modified herein.

We agree with the Administrative Law Judge that Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct: (1) Supervisor Glenn Vicent's coercive interrogation of employee Nicely Adams; (2) Vicent's separate threats of plant closure to Adams and employee LuAnne Glover; and (3) Plant Manager Richard Miller's promise that he would promote Adams and give her a pay raise if she refrained from supporting the Union. The General Counsel has excepted to the Administrative Law Judge's failure to find additional 8(a)(1) violations. For the reasons set forth below, we find merit in certain of these exceptions.

1. On two occasions in March 1980,[3] Respondent's vice president and general manager, Edwin Anderson, denied requests by production and maintenance employees for a wage increase because of economic conditions. Anderson said that he would discuss this matter with corporate headquarters and asked the employees to allow him 30 days in which to do so. Thereafter, on April 7, the Union informed Respondent that its employees were engaged in organizational activities. Later that same day, Anderson convened a meeting of all employees and announced that Respondent was giving them a 25-cent wage increase.

In dismissing this 8(a)(1) allegation, the Administrative Law Judge found that here Respondent had overcome the presumption that a wage increase is unlawful when granted during a union organizing campaign. The Administrative Law Judge relied on evidence that the raise was granted about 3 weeks after Anderson asked employees for 30 days in which to consult with corporate headquarters concerning the employees' pay raise request. Thus, he concluded that the General Counsel had failed to establish that Respondent would not have given the pay raise in the absence of union activities.

Contrary to the Administrative Law Judge, we agree with the General Counsel that Respondent had the burden of disassociating the announcement of the wage increase from the organizing campaign. The Board has held that, where, as here, the timing of changes in terms and conditions of employment occurs shortly before an election, absent an affirmative showing of some legitimate business reason for the timing it will infer improper motivation and interference with employee freedom of choice.[4] Respondent has presented no evidence to establish that the timing of the announcement was in response to the employees' prior request for a pay raise. Thus, it is apparent to us that Respondent's action, coming so quickly after it learned of the employees' interest in union representation, was calculated to quell dissatisfaction emerging from the grievance over wage which had prompted the employees to seek union representation in the first place. In these circumstances, we conclude that Respondent violated Section 8(a)(1) of the Act by granting employees the wage increase of April 7.

2. The Administrative Law Judge also found that Plant Manager Miller told a group of employ-

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Member Jenkins adopts the Administrative Law Judge's finding that Respondent did not violate the Act when its vice president and general manager, Edwin Anderson, expressed shock and disappointment to employee groups after receiving a telegram which advised him that employees were involved in union activities. In reaching this conclusion, Member Jenkins finds that the Administrative Law Judge's reference to *Wilker Bros. Co., Inc.*, 236 NLRB 1371 (1978), is inapposite here. In that case the employer received a telegram from the union listing the names of several employees who were members of the union's in-plant organizing committee. Then, a few days after the telegram was posted in the plant, three employees on the list were approached separately by their supervisors who expressed shock or surprise that the employee's name had appeared on the list. Anderson's expression of shock and disappointment here, by contrast, was not directed at any specific employee. Thus, his remarks constituted nothing more than an innocuous reaction to the Union's telegram and did not reasonably tend to interfere with employee rights as did the supervisors' remarks in *Wilker Bros.*

[3] All dates are in 1980 unless otherwise indicated.

[4] See *The May Department Stores Company*, 191 NLRB 928 (1971).

ees about 3 days before the election that Respondent planned to expand its plant so that Miller could move "his company" into the facility. Miller also stated "that if a union came in, that he was not going to bring his plant." The Administrative Law Judge found these remarks lawful because he concluded they did not have an adverse impact on employees' Section 7 rights.

We disagree with the Administrative Law Judge. In our view, Miller's statement constitutes an unlawful threat of reprisal for the employees' involvement in union activities. An expanded facility would in all probability provide Respondent's employees with increased job security and greater opportunity for advancement. Miller, in effect, promised the employees a benefit in one breath and then in another threatened to withdraw the benefit if they selected the Union as their bargaining representative. Accordingly, we find that Respondent has further violated Section 8(a)(1) of the Act by threatening to discontinue its plans for plant expansion.

3. Additionally, the Administrative Law Judge credited the testimony of employees Adams and Mary Louise Thompson concerning another group meeting conducted by Miller. In this regard, Adams stated that in mid-June Miller told the employees that "he knew there were some problems in the plant; but if we gave him a chance [he] would straighten things out." Thompson testified that Miller commented, apparently during that same meeting, "that things were going to get better and that the business was slow and just as soon as he could get things kind of straightened out for us, we would all be made happy; and he also said business was slow, and he knew that we needed a raise, but right then he couldn't get it, and that he would try all he could to get us a raise for . . . whatever benefits he could get, that he would try to get it for us, that he was our shop manager. . . ." The Administrative Law Judge concluded that Miller's remarks were ambiguous and thus fall short of the combination of "whatever you guys want, I can get for you," coupled with the intention to "straighten this whole thing out," and thus was not an illegal promise of benefits such as the Board held in *Rexart Color & Chemical Co., Inc.*, 246 NLRB 240 (1979).

Contrary to the Administrative Law Judge, we conclude that Miller's speech was not ambiguous, but clearly conveyed an unlawful promise of future benefits similar to the statements the Board found unlawful in *Rexart, supra*.[5] We found, *supra*, that Respondent engaged in unlawful conduct by granting the wage increase of April 7 immediately after receiving notification of its employees' involvement in union activities. By subsequently telling the employees about 2 weeks before the election that "if they gave him a chance, he would straighten it out . . . [that they] would all be made happy," Miller was assuring them of even greater benefits than those granted in April if they turned to him instead of the Union. Accordingly, we find that Respondent also violated Section 8(a)(1) of the Act when it offered employees increased benefits and wages to induce them to abandon their support for the Union.[6]

The Representation Proceeding

Since certain of Respondent's unfair labor practices also interfered with the election held in Case 10-RC-12101 on June 27, 1980,[7] we adopt the Administrative Law Judge's recommendation to sustain the Union's Objections 3 and 5.[8] The Administrative Law Judge further recommended, and we agree, on the basis of these meritorious objections that the June 27 election should be set aside and that Case 10-RC-12101 be remanded to the Regional Director for the purpose of holding a second election. In reaching this conclusion, we note that our additional 8(a)(1) findings, *supra*, concerning Plant Manager Miller's threat to discontinue plans for plant expansion and his unlawful promise of benefits provide a further basis for sustaining the Union's Objections 3 and 5, respectively.[9]

Amended Conclusions of Law

Substitute the following for Conclusion of Law 3:

"3. By interrogating employees concerning their union activities; by threatening employees with re-

[5] Member Zimmerman would adopt the Administrative Law Judge's conclusion that Miller's statements at the mid-June meetings were ambiguous, and that they did not convey a promise of benefits in exchange for the withholding of support from the Union. For the reasons stated by the Administrative Law Judge, he would dismiss the complaint allegations in this regard.

[6] See, e.g., *C. Markus Hardware, Inc.*, 243 NLRB 903, 910 (1979); *Federal Alarm*, 230 NLRB 518, 527 (1977); *Gould, Inc.*, 221 NLRB 899, 906 (1975).

[7] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The corrected tally of ballots shows that, of approximately 47 eligible voters, 14 cast ballots for, and 21 cast ballots against, the Union; there were 11 challenged ballots and 2 void ballots. On December 15, 1980, the Board issued an unpublished Decision in which it adopted, *inter alia*, the Regional Director's recommendation that the challenges to 8 of the 11 challenged ballots be sustained because the 8 voters challenged were no longer employed on the date of the election. Thus, the three remaining challenged ballots were no longer determinative of the election results.

[8] We find it unnecessary to pass on, and we do not rely on, the Administrative Law Judge's recommendation that the Union's Objection 4 be sustained.

[9] For the reasons stated in fn. 5, above, Member Zimmerman would not rely on the alleged promises of benefits to employee groups as a basis for sustaining Objection 5.

prisals, including plant closure and the discontinuation of plans for plant expansion, if they selected the Union as their bargaining representative; and by granting employees wage increases and promising them increased benefits if they withdrew support from the Union, Respondent has violated Section 8(a)(1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Fisher-Haynes Corporation of Georgia, Norcross, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(c):

"(c) Granting employees wage increases and promising them increased benefits, including promotions with pay raises, if they refrain from joining, supporting, or engaging in activities on behalf of the Union."

2. Insert the following as paragraph 1(d) and reletter present paragraph 1(d) as 1(e):

"(d) Threatening employees with reprisals, including plant closure and the discontinuation of plans for plant expansion, if they select the Union as their bargaining representative."

3. Substitute the attached Appendix B for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the election held on June 27, 1980, in Case 10-RC-12101 be, and it hereby is, set aside, and that Case 10-RC-12101 be, and it hereby is, severed from Case 10-CA-15975 and remanded to the Regional Director for Region 10 for the purpose of conducting a new election.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT interrogate our employees concerning their union membership, activities, and desires.

WE WILL NOT threaten our employees with plant closure if they bring Truck Drivers and Helpers Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, into the plant.

WE WILL NOT grant our employees wage increases or promise them increased benefits, including promotions with pay raises, if they refrain from joining, supporting, or engaging in activities on behalf of the Union.

WE WILL NOT threaten our employees with reprisals, including plant closure and the discontinuation of plans for plant expansion, if they select the Union as their bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the National Labor Relations Act.

FISHER-HAYNES CORPORATION OF GEORGIA

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge: These consolidated cases were heard before me in Atlanta, Georgia, on April 7, 1981, pursuant to a complaint, dated August 6, 1980, issued by the General Counsel of the National Labor Relations Board through the Acting Regional Director for Region 10 of the Board in Case 10-CA-15975, and the August 11, 1980, order directing issued by the Regional Director in Case 10-RC-12101.

The complaint is based upon a charge filed by Truck Drivers and Helpers No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Local 728, Union, or Petitioner) against Fisher-Haynes Corporation of Georgia (herein called Respondent, Fisher-Haynes, or Employer). In the complaint, the General Counsel alleges that Respondent has violated Section 8(a)(1) of the Act by interrogating and threatening employees, promis-

ing employees promotions and other economic benefits, and announcing and granting a wage increase to its employees on April 7, 1980.[1]

By its answer, Respondent admits certain allegations, but denies that it has violated the Act in any manner.

The petition in Case 10-RC-12101 was filed April 28, 1980, and pursuant to a Stipulation for Certification Upon Consent Election duly approved, an election by secret ballot was conducted on June 27, 1980, among the employees in the stipulated appropriate unit to determine the question concerning representation.[2]

Upon conclusion of the balloting, the parties were furnished a corrected tally of ballots which shows that, of approximately 47 eligible voters, 14 cast valid votes for, and 21 cast valid votes against, Petitioner. There were 11 challenged ballots[3] and 2 void ballots. Petitioner filed timely objections to the election, some which were dismissed by the Regional Director in his August 11, 1980, Report on Objections. The Regional Director ordered a hearing only with respect to Petitioner's Objections 3, 4, and 5.

In his Report on Objections the Regional Director stated: "The evidence presented in support of Objections 3, 4, and 5 is coextensive with conduct alleged as violative of Section 8(a)(1) in the complaint heretofore issued in Case 10-CA-15975."

Upon the entire record in this consolidated proceeding, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by all counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Georgia corporation with an office and place of business located at Norcross, Georgia, is engaged in the manufacture of wire products. During the past 12 months, Respondent sold and shipped from its Norcross, Georgia, facility goods valued in excess of $50,000 directly to customers located outside the State of Georgia. Although Respondent does not so admit, I find that Fisher-Haynes is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Local 728 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR PRACTICES

A. *Introduction*

In early March, Respondent's employees met with Vice President and General Manager Edwin L. Anderson in the lunchroom and requested a pay raise. Anderson informed them that business was poor so no wage increase could be granted at that time, but he stated he would discuss the matter with them further. The employees then appointed a committee of some seven employees, including Nicely Adams and Mary Thompson,[4] to meet with Anderson a week later. The first committee meeting was held in the lunchroom and employees presented Respondent with a list of seven or eight items they wanted considered, including sick days, floating holidays, posting of job openings, and formation of a grievance committee and credit union. Anderson again told the employees that he could not grant a wage increase at that time, but that he would discuss the request with corporate headquarters. He asked employees to allow him 30 days in which to do so.

Thereafter the employees contacted Local 728, and on April 7, Respondent received a telegram (G.C. Exh. 2) from the Union informing it that Respondent's employees were engaged in union organizational activity.

B. *The 8(a)(1) Allegations*

1. Complaint paragraphs 8 (Anderson), 13, and 14 dismissed

On or about April 7, Vice President Anderson convened a second meeting of the committee and told them he was shocked when he received the Union's telegram because he thought they had agreed to wait 30 days to allow Respondent time to take some action. Later that day, Anderson also convened a meeting of all shift employees in the lunchroom and repeated that he was disappointed when he learned of the employees' union activities, especially since he thought they had agreed to settle things among themselves. I credit the testimony of Nicely Adams who heard Anderson's statement at the meeting of committee members, and the testimony of LuAnne Glover who heard Anderson make the statement at the lunchroom meeting. Glover was not a member of the committee.

Counsel for the General Counsel argues that the allegation in complaint paragraph 8 relating to Vice President Anderson's April 7 threat of "reprisals" is his ex-

[1] All dates are for 1980 unless otherwise indicated.

[2] The stipulated appropriate unit is:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Norcross, Georgia facility including all general production employees, role and multi-spot, C & S operators, mig welders, setup men, sheet metal operators, maintenance men, tool & die makers, machinists, forklift drivers-material handlers, truck drivers, customer relations shipping clerical employee, the janitor and the C & S and paint line leadmen, but excluding all office clerical employees, professional employees, guards, the F department leadman, grid department leadman, the tool & die department leadman and all other supervisors as defined in the Act.

[3] Of the 11 challenged ballots 8 were resolved, subject to Board approval, by the Regional Director in his August 11, 1980, Report on Objections and Challenged Ballots, and are not at issue in this consolidated proceeding. As the remaining three ballots are not determinative, the Regional Director deemed it unnecessary to resolve them.

[4] Adams and Thompson were two of the five witnesses who testified in this proceeding. Adams was called by the General Counsel and Thompson was called by Respondent. A sixth individual, employee Thoung Nguyen, was called by Respondent to testify, but gave the apparent indication that he was unable to communicate without an interpreter. Respondent did not seek to secure an interpreter and withdrew its request that Nguyen testify. I make no finding regarding the ability of Nguyen to testify without the assistance of an interpreter.

pression of shock and disappointment, upon receipt of the Union's telegram, that the employees had not given him the 30 days they said they would. I find no violation, and I shall dismiss paragraph 8. *Wilker Bros. Co., Inc.*, 236 NLRB 1371, 1376 (1978). Other cases cited by counsel for the General Counsel in her brief involve situations where the employer equated union activity with disloyalty to the employer, thereby implying future reprisals. Anderson made no disloyalty-equating remarks.

Still later on April 7, Vice President Anderson convened a second meeting with employees during which he announced a 25-cent wage increase. The pay stubs of Nicely Adams for early to mid-April 1980 (G.C. Exh. 3) reflect this pay increase.

Complaint paragraphs 13 and 14 allege that the announcing and granting of the 25-cent wage increase was conduct prohibited by Section 8(a)(1) of the Act. While a wage increase is presumptively unlawful when granted during a union organizing campaign, the presumption disappears here in face of the evidence that employees had requested a raise about a month earlier and Vice President Anderson had requested a month's time to work on the request. As the General Counsel's evidence fails to establish that Respondent would not have announced and granted the wage increase of April 7 in the absence of the Union's telegram of the same date, I find no violation. Accordingly, I shall dismiss complaint paragraphs 13 and 14.

Thereafter Respondent conducted an active campaign against the Union which included: (1) holding all-employee meetings during which Respondent presented its views against unionization; (2) holding small group meetings during which Respondent informed employees about big union expenses and fancy living on the part of union representatives; and (3) speaking to individual employees about the Union in their work area.

2. Supervisor Vicent interrogates and threatens Nicely Adams in mid-April

Adams testified that Supervisor Glenn Vicent came to her at machine number 12 around the first of April[5] and told her that he was surprised that, after she had been working for Respondent for so long, she would want a union in the building. He asked her (whether she thought) that if the Union came in, would it spoil the future of her children. Adams told him that it would not because she had been working there 10 years and there was no future there for her children.

Vicent then asked her what Adams would do if Respondent closed down the plant. She told him that she would probably go on welfare and obtain food stamps and that she probably would make just as much at the end of the month as she earns working for Respondent.

Vicent recalls the conversation occurring around April 10, and concedes that they did talk "a little about the union and what would happen, possibly, if the union were to come into the company," that the future of her children was mentioned, but he denied saying that the plant would close. He admitted that he was not exactly sure what he did ask Adams and that basically he really could not say. Moreover, he conceded that the conversation concerned "what she would do if the company was no longer there and what I would do if the company was no longer there."

> Q. Did you talk in terms of relating this to the union?
>
> A. I suppose so, yes, sir.

Vicent testified that, following the conversation with Adams, Respondent's attorney, Tom Rebel, met with the supervisors regarding the union situation and gave them a list of "do's" and "don'ts" regarding what they could say and could not say. "Plant closure was at the top of the list of what we could not say."

I credit Adams concerning the foregoing testimony with Supervisor Vicent, not only for demeanor reasons, but also for the reason that Supervisor Vicent conceded most of what she had to say. Accordingly, I find the that the General Counsel has established that Respondent unlawfully interrogated employee Adams, as alleged in paragraph 7 of the complaint, and threatened her with plant closure as alleged in paragraph 9 of the complaint.[6]

3. Supervisor Vicent threatens LuAnne Glover in early May

Machine operator LuAnne Glover testified that, in early May, Vicent engaged her in a conversation at her machine. He told her that a union was not needed and if one came in the plant would probably close down and that if the employees went on strike they could be replaced. He further said that a union would take up too much time with the union steward on (grievance) matters.

During his own testimony, Supervisor Vicent candidly admitted that he had engaged Glover in conversation in early May. He testified that when he approached her he stated that he was not making any threats or promises to her regarding the Union or what the Company would do. He testified that he told Glover that, if the Union were to come into the plant, there could be negotiations with the Union at which time "there may be a strike; and that we could—not necessary would—replace the people involved in the strike." According to Vicent, Glover said she knew that and that ended the conversation.

I was impressed with Glover's demeanor, and I credit her. Accordingly, I find that, in early May, Respondent, through Supervisor Glenn Vicent, threatened Glover with probable plant closure in the event the employees voted in Local 728. I further find that by such plant closure threat Respondent violated Section 8(a)(1) of the Act as alleged in complaint paragraph 9.[7]

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[5] Adams had a tendency to date events slightly earlier than they actually occurred. An example of this pertains to the date of Respondent's receipt of the Union's telegram which she also placed around the first of April. Accordingly, I find that this conversation, which Vicent concedes in fact happened, occurred somewhere around the first or second week of April 1980.

[6] In the absence of evidence of other threats, I shall dismiss complaint par. 8 as it relates to Supervisor Vicent threatening employees with reprisals on or about April 15.

[7] Counsel for the General Counsel stated in her oral argument that the statement that strikers "could be replaced" was not alleged as a violation of the Act.

4. Complaint paragraph 8 dismissed as to Plant Manager Miller

Paragraph 8 of the complaint sets forth three incidents in which Respondent allegedly "threatened its employees with reprisals" if they engaged in activities on behalf of the Union. I have dismissed the first two. The third such incident is attributed to Plant Manager Richard C. Miller on or about June 13, 1980. At the hearing, counsel for the General Counsel asserted that automatic welder Genevia Leach's testimony supported the allegation.

Leach testified that, at a meeting with a small group of employees which she attended about 3 days before the June 27 election, Miller spoke of expansion plans for the building and that he was going to bring his (unnamed company) "down here." Miller added: "He told us that if a union came in, that he was not going to bring his plant."

Miller did not testify. Supervisor Vicent did testify, but conceded that he was not present at all of the group sessions Miller had. Although Vicent testified that Miller read from a printed text at the group sessions he attended, he admitted that he did not attend all the sessions at which Miller spoke. Vicent did concede that plant expansion had been discussed, apparently among management. However, he testified that it was not mentioned to Vicent's recollection at the meeting with employees.

In light of the specific testimony of Leach, the fact that Vicent did not testify that he was present at the group meeting Leach described, and in view of the fact that Vicent conceded that there had been some discussion of plant expansion, apparently at least among management, I find that Miller, who did not testify, did make the statement attributed to him by Leach. Having so found, I further find that such a statement does not constitute a threat of reprisal in violation of Section 8(a)(1) of the Act. Thus, there is no showing that this statement in any way indicates a detriment to the employees at the Norcross facility.

Accordingly, I dismiss paragraph 8 with respect to the portion alleging that Plant Manager Miller threatened employees with reprisals on or about June 13, 1980. As all incidents in paragraph 8 have been dismissed, I shall dismiss complaint paragraph 8 in its entirety.

5. Plant Manager Miller's June 13 promise of benefits—complaint paragraph 11 dismissed

Paragraph 11 of the complaint alleges that Plant Manager Miller unlawfully promised employees economic and other benefits on or about June 13, 1980.

In support of complaint paragraph 11, Nicely Adams testified that, at one of the group meetings in mid June, Miller, the new plant manager, read to them from a paper. In so reading, Miller described a matter involving the Teamsters Union in Florida, the salaries of union representatives, referred to the Teamsters having employees on strike, union representatives enjoying fine dinners and expensive wines, driving big cars, and that union dues would be $20 to $25 a month. Adams further testified that Miller said he knew there were problems in the plant between management and employees, but that if they gave him a chance, he would straighten it out.

In her testimony, Genevia Leach testified that in the June group meeting she attended Miller told employees they would be treated fairly and that they could come to him with any problems they had.

Employee Mary Louise Thompson, called by Respondent, described a meeting Miller had with the committee of employees in which he told them that business was slow and that "as soon as he could get things kind of straightened out for us, we would all be made happy; and he also said business was slow, and he knew that we needed a raise, but right then we couldn't get it, and that he would try all he could to get us a raise for whatever, you know—whatever benefits that he could get, that he would try to get it for us; that he was our shop manager, and so on and on." Thompson could not recall when this meeting occurred except that it was before the election.

Thompson further described another meeting held later in June between Miller and about seven or eight employees, this one attended by Nicely Adams among others. Thompson testified that Miller read from a paper but that "I can't remember all he said from that."

In his own testimony, Vicent did not deny that Miller referred to straightening out problems. Instead, Vicent testified that Miller read from a written speech which Vicent had read prior to Miller delivering it. However, Vicent conceded that he did not follow the speech as it was given, and could not say that Miller read it word for word. In the speech given, Vicent testified that Miller described problems involving the Teamsters at other plants, including some divisions of Respondent in Florida, and referred to strikes and replacements of strikers. At no point, however, did Vicent deny that Miller referred to straightening out problems.

In her oral argument, counsel for the General Counsel contends that Plant Manager Miller's mid-June request to employees, that they give him a chance to prove himself, that he would straighten things out, constitutes an illegal promise of benefits if employees would refrain from voting in the Union. I find that such ambiguous remarks fall short of the combination of "whatever you guys want, I can get for you," coupled with the intention to "straighten this whole thing out" found to be an illegal promise of benefits in *Rexart Color & Chemical Co., Inc.*, 246 NLRB 240 (1979). Accordingly, I shall dismiss complaint paragraph 11. See also *Visador Co.*, 245 NLRB 508 (1979).

6. Miller's promotion promise to Nicely Adams

Paragraph 10 of the complaint alleges that on or about June 20, 1980, Plant Manager Miller promised employees promotions with wage increases if they refrained from supporting the Union. The General Counsel relies upon the testimony of Nicely Adams to support this allegation.

Adams testified that, around the first of June, Miller approached her while she was running the press brake. After greeting Adams, he said he would like to get her a promotion but that he could not do it because it would seem like a "bribe" because of the union activities. Adams responded that she did not want a promotion but that she just wanted to make some money. Miller replied that a raise in pay automatically comes with a promo-

tion. Adams then responded, "Well, okay, then, I'll take a promotion."

However, it was not until the Wednesday before the instant hearing that Adams was promoted at which time she received a pay raise. In the meantime, she continued to work the same job.

As earlier noted, Plant Manager Miller did not testify. Thus, the testimony of Adams stands unrefuted. In her oral argument, counsel for the General Counsel contends that this unrefuted evidence establishes that Respondent promised employee Nicely Adams a promotion if she refrained from union activity, and that Respondent thereby further violated Section 8(a)(1) of the Act.

In its brief, Respondent cites cases, such as *WCAR, Inc.*, 203 NLRB 1235 (1973), in which the employees were advised that they would not receive increases because of the union's organizational campaign for the "employer's hands were tied" and no pay increase could be granted at that time. No violation was found. However, I find such cases inapposite. In our situation we have the testimony of Adams, whom I credit, that Miller initiated a conversation in which he stated that he wanted to give Adams a promotion, with a pay raise, but could not do so because it would be considered a *bribe* in view of the pending election. Respondent offered no evidence, and the record contains none, pointing to a need for Miller to approach Adams. He raised the subject and dangled the bait of a promotion with a pay raise before her. I find that the action of Miller was calculated to interfere with the Section 7 rights of employees to support a labor organization by persuading Adams to vote against Local 728 in the election to be held the following week in order that she could receive the promotion with pay raise that Miller dangled before her. It is irrelevant that Adams did not in fact receive the promotion until many months later. The relevant and material fact is that the interference occurred on some date in June before the election. Accordingly, I find that, by expressing a desire to promote Adams with a pay raise, Respondent violated Section 8(a)(1) of the Act.[8]

IV. PETITIONER'S OBJECTIONS TO THE ELECTION

A. *Objection 3*

This objection, that Respondent coerced employees by threatening plant closure if the Union were elected, is substantially similar to complaint paragraph 9. Accordingly, Objection 3 is supported by the findings I have made regarding an early May 1980 threat by third-shift Foreman Glenn Vicent made to employee LuAnne Glover that Respondent would close its plant if employees selected the Union as their bargaining representative.

The other date set forth in complaint paragraph 8 is the April 15 plant closure threat made by Supervisor Vicent to employee Adams. However, the date of April 15 predates the critical period which opens with the filing of the petition in the representation case on April 28, 1980. *Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962). In its brief, Local 728 argues that conduct occurring prior to the opening of the critical period may be considered. It is true that the Board has held that pre-petition conduct may be considered in determining whether a party has engaged in objectionable conduct where such pre-petition conduct lends "meaning and dimension" to post-petition conduct. *Blue Bird Body Company*, 251 NLRB 1481, fn. 2 (1980). Nevertheless, the pre-petition event does not itself constitute an independent act of objectionable conduct.

B. *Objection 4*

In this objection, Local 728 contends that "The Company intimidated and coerced the employees by threatening the employees with discharge and other disciplinary action if the Union was elected." The only evidence supporting this objection which falls within the critical period is the early May 1980 remarks to employee Glover by Supervisor Vicent that strikers could be replaced.[9] I find such statement to be objectionable conduct inasmuch as the Board has found such a threat to be a violation of Section 8(a)(1) of the Act. *Brownsboro Hills Nursing Home, Inc.*, 244 NLRB 269 (1979). Cases holding such a remark to be lawful involve situations where the employer gave an adequate explanation of employee reinstatement rights, or differentiated between an economic strike and an unfair labor practice strike, or otherwise dissipated the raw impact of such a blunt remark. An example of a "full explanation" is *Liberty Nursing Homes, Inc., d/b/a Liberty Nursing Home*, 236 NLRB 456, 459 (1978), cited by Respondent in its brief.

C. *Objection 5*

This objection reads: "The Company promised wage increases and other benefits to employees if the Union was defeated." As the wage increase and its implementation of April 7 are pre-petition events, such conduct does not constitute grounds for setting aside the election. However, the objection is supported by the evidence relating to the June 1980 promise of benefits to employee Nicely Adams by Plant Manager Miller.

Based upon the foregoing, I shall recommend that the election herein be set aside, that the Regional Director conduct a second election to determine the question of representation, and that the Regional Director include in the notice of election the *Lufkin Rule* paragraph set forth in the attached notice marked "Appendix A."[10]

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

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[8] The General Counsel does not allege that the refusal to promote constitutes a violation of Sec. 8(a)(3) of the Act, nor does counsel for the General Counsel request a remedial order that Adams' 1981 promotion be made retroactive to June 1980 and that she be paid backpay for any higher earnings she may have lost by reason of Respondent's failure to promote her. See *Colorado Seminary (University of Denver)*, 219 NLRB 1068 (1975).

[9] In her oral argument, counsel for the General Counsel expressed the position that the General Counsel was not alleging the strike replacement statement to be a violation of the Act.

[10] *The Lufkin Rule Company*, 147 NLRB 341 (1964); *Bush Hog, Inc.*, 161 NLRB 1575 (1966); *Associated Milk Producers, Inc.*, 255 NLRB 750 (1981).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 728 is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees about their union activities, by threatening them with plant closure if they select the Union, and by promising them promotions with wage increases in order to persuade them to reject the union, Respondent has violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Other than found above, Respondent has not engaged in unfair labor practices within the meaning of the Act.

6. By engaging in the conduct described above, Respondent has interfered with its employees' freedom of choice in the election conducted June 27, 1980.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Fisher-Haynes Corporation of Georgia, Narcross, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union membership, activities, and desires.

(b) Threatening its employees with plant closure if they bring Truck Drivers and Helpers Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, into the plant.

(c) Promising its employees promotions with wage increases if they refrained from joining, supporting, or engaging in activities on behalf of the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees with respect to their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its Norcross, Georgia, facility copies of the attached notice marked "Appendix B."[12] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, including paragraphs 8, 11, 13, and 14, is dismissed insofar as it alleges unfair labor practices not specifically found herein.

IT IS FURTHER ORDERED that the election held June 27, 1980, in Case 10-RC-12101 is hereby set aside and that said case be remanded to the Regional Director for Region 10 for the purpose of conducting a new election, and that the paragraph set forth in attached "Appendix A" be included in the Notice of Second Election to be issued by the Regional Director.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO ALL VOTERS

The election conducted on June 27, 1980, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this notice of election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.